

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

December 13, 2016 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	16-21902-D-13	VICTOR/ANITA GALINDO	MOTION TO MODIFY PLAN
	JCK-3		11-8-16 [41]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

2. 14-23906-D-13 JOHN/CATHY RAY
PGM-3

CONTINUED MOTION FOR
COMPENSATION FOR PETER G.
MACALUSO, DEBTORS' ATTORNEY
8-31-16 [53]

3. 16-25709-D-13 ELEANOR GOMEZ
BSH-2

MOTION TO CONFIRM PLAN
10-18-16 [28]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party filed her schedules in this case 21 days after she filed her master address list. The schedules included several creditors who had not been listed on the master address list, and the debtor did not amend the master address list to include them. Thus, when she utilized the PACER matrix for service of this motion, those creditors were not included. The creditors not served include the debtor's mortgage lender, the priority creditors listed on Schedule E/F, and three general unsecured creditors on Schedule E/F.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

4. 16-25833-D-13 WILLIAM ANDERSON
MJD-1

MOTION TO CONFIRM PLAN
10-26-16 [17]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

5. 16-26239-D-13 DEREK BURGESS
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
11-7-16 [20]

Final ruling:

This case was dismissed on December 1, 2016. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

6. 16-26642-D-13 MARGARITA COVINGTON
EAT-1

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK TRUST, N.A.
11-17-16 [27]

7. 16-27142-D-13 VICTOR/GLORIA LUERA
MKM-1

MOTION TO VALUE COLLATERAL OF
DILBAG HOTH
11-14-16 [16]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Dilbag Hothi at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Dilbag Hothi's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

8. 16-26255-D-13 DANIEL MARTINEZ
TOG-1

MOTION TO VALUE COLLATERAL OF
ONE MAIN FINANCIAL
10-31-16 [16]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving party is to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion. No further relief is being afforded. No appearance is necessary.

9. 16-22063-D-13 RANDY/ROSELYN GAJARDO
SJS-2

MOTION TO CONFIRM PLAN
10-24-16 [47]

Final ruling:

This is the debtors' motion to confirm a second amended chapter 13 plan. On November 23, 2016, the debtors filed a third amended plan and a motion to confirm it. As a result of the filing of the third amended plan, the present motion is moot. The motion will be denied as moot by minute order. No appearance is necessary.

10. 16-24968-D-13 SHERON NOR WOO MOTION TO CONFIRM PLAN
CLH-2 11-1-16 [33]

11. 16-25068-D-13 SHANE FRITTS MOTION TO CONFIRM PLAN
LRR-1 10-20-16 [24]

Final ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. The motion will be denied because the moving party failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving party failed to serve at least 11 creditors listed on his amended Schedule E/F.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

12. 16-24379-D-13 KULDIP SANDHU CONTINUED MOTION TO CONFIRM
HWW-2 PLAN
9-15-16 [26]

13. 16-24379-D-13 KULDIP SANDHU CONTINUED MOTION TO VALUE
HWW-3 COLLATERAL OF BMO HARRIS BANK
N.A./TRANSPORTATION TRUCK AND
TRAILER SOLUTIONS, LLC
10-4-16 [31]

14.	16-24379-D-13 HWW-4	KULDIP SANDHU	CONTINUED MOTION TO VALUE COLLATERAL OF ENGS COMMERCIAL FINANCE CO. 10-4-16 [34]
15.	16-24379-D-13 HWW-5	KULDIP SANDHU	CONTINUED MOTION TO VALUE COLLATERAL OF ENGS COMMERCIAL FINANCE CO. 10-4-16 [37]
16.	16-21781-D-13 MJD-1	PETER SOLORIO	MOTION TO MODIFY PLAN 10-20-16 [22]
17.	16-21783-D-13 BSH-4	HECTOR PEREZ	MOTION TO CONFIRM PLAN 10-27-16 [105]

18. 16-23587-D-13 ANDREW KNAPP AND GINA MOTION TO CONFIRM PLAN
LRR-2 PEARL 10-12-16 [52]

Final ruling:

This case was dismissed on October 19, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

19. 16-23587-D-13 ANDREW KNAPP AND GINA MOTION TO VALUE COLLATERAL OF
LRR-3 PEARL OCWEN LOAN SERVICING
10-12-16 [57]

Final ruling:

This case was dismissed on October 19, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

20. 16-22099-D-13 RUBEN VALLEJO OBJECTION TO CLAIM OF SAN
PLC-4 JOAQUIN COUNTY TAX COLLECTOR,
CLAIM NUMBER 5
10-17-16 [64]

Final ruling:

The matter is resolved without oral argument. The court's record indicates that no timely opposition/response to the debtor's objection to the claim of San Joaquin County Tax Collector, Claim No. 5, has been filed and the objection is supported by the record. Accordingly, the court will issue a minute order sustaining the debtor's objection to claim. No appearance is necessary.

21. 16-26608-D-13 SERGY/LEWIS ZACHARY OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
11-21-16 [20]

22.	16-26623-D-13 RDG-2	LEZLI STOWERS	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 11-21-16 [18]
23.	16-25228-D-13 RDG-1	PATRICK WOLRIDGE	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 9-26-16 [13]
24.	16-25228-D-13 ETL-1	PATRICK WOLRIDGE	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION 9-28-16 [16]
25.	16-26642-D-13 RDG-2	MARGARITA COVINGTON	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 11-21-16 [32]

Tentative ruling:

This is the debtor's motion to vacate the court's order filed November 14, 2016 by which this case was dismissed. The motion was noticed pursuant to LBR 9014-1(f)(2), and ordinarily, the court would entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

First, the court is not satisfied that service of the motion was sufficiently calculated to give notice to all creditors. Although the moving party served the chapter 13 trustee, the United States Trustee, and the creditors listed on the schedules, the moving party failed to serve five of the eight creditors who have filed claims in this case at the addresses on their proofs of claim. Service at such addresses is required for notices given pursuant to Fed. R. Bankr. P. 2002 (see Fed. R. Bankr. P. 2002(g)). Although a motion to vacate an order of dismissal is not within the scope of Rule 2002, if the court were to consider this motion further, it would likely require a continuance of the hearing and service on creditors filing claims at the addresses on their proofs of claim.

Second, the court is not convinced cause exists to vacate the dismissal. The case was dismissed after the debtor had failed to comply with a conditional order of dismissal requiring the debtor to obtain confirmation of a plan by November 1, 2016. The debtor filed a first amended plan on July 18, 2016 but did not file a motion to confirm it. When no motion had been filed by September 6, the trustee filed his motion to dismiss the case, set for hearing on September 22. On September 12, the debtor finally filed a motion to confirm the first amended plan and set it for hearing on November 1.

Meanwhile, at the hearing on the trustee's motion to dismiss, on September 22, a hearing which the debtor's counsel attended, the court conditionally denied the motion and ruled that the debtor "shall" confirm a plan by November 1 or the case would be dismissed on the trustee's declaration without further notice. The court denied the debtor's motion to confirm the first amended plan on November 1 because the debtor had served the notice, motion, and declaration, but not the plan itself, and because the debtor had served the chapter 13 trustee and United States Trustee, but had not served any of the creditors. On November 9, the debtor filed a second amended plan and a motion to confirm it, which the debtor set for hearing on January 3, 2017.

Although the present motion states that the first amended plan, the one set for hearing on November 1, had fully addressed the trustee's and a creditor's objections to the debtor's original plan, the trustee in fact renewed two of his original objections and added four new ones in his opposition to the motion to confirm the first amended plan. Those objections were not heard because, as indicated, the motion was denied for procedural reasons. However, the court has examined the debtor's second amended plan filed November 9 (set for hearing on January 3, 2017) and finds it still fails to satisfy two of the trustee's objections to the first amended plan: (1) the plan payment is not sufficient to cover the proposed monthly payments to secured creditors, with trustee compensation; and (2) at the interest rate and monthly payment provided for the Class 2 creditor, it will take 109 months to pay the claim. As regards the latter objection, the debtor stated in reply to

the trustee's opposition to the first amended plan that the debtor would continue to pay the car payments, if any remained outstanding, after the close of the bankruptcy case. That is not a proper treatment for a Class 2 claim. Finally, the court would deny the motion filed November 9 (set for hearing on January 3, 2017) in any event because the moving party failed to serve five of the eight creditors filing claims in this case at the addresses on their proofs of claim, as required by Fed. R. Bankr. 2002(g).

For the reasons stated, the court concludes the debtor has failed to demonstrate sufficient cause to vacate the order of dismissal, and the motion will be denied. The debtor believes the dismissal would be "manifestly unjust" to her and to creditors, as she needs to reorganize her finances to keep her home and it would be impossible to pay creditors without reorganization. That is not a sufficient basis on which to vacate the dismissal as the dismissal was without prejudice to re-filing.

The court will hear the matter.

27. 16-26469-D-13 LONEY/MARY TURPIN
RDG-1

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
11-21-16 [28]

Final ruling:

The debtors' reply to the Trustee's objection to confirmation indicates that they will be filing an amended plan. As such, this objection will be sustained by minute order. No appearance is necessary.

28. 16-26469-D-13 LONEY/MARY TURPIN
WFM-1

OBJECTION TO CONFIRMATION OF
PLAN BY PENNYMAC LOAN SERVICES,
LLC
11-23-16 [31]

Final ruling:

The debtors' reply to Pennymac Loan Services, LLC's objection to confirmation indicates that they will be filing an amended plan. As such, this objection will be sustained by minute order. No appearance is necessary.